

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

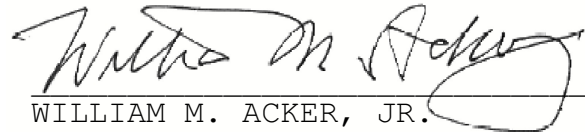
MARK KING, D.M.D.,	}	
	}	
Plaintiff,	}	
	}	CIVIL ACTION NO.
v.	}	06-AR-1255-S
	}	
METROPOLITAN LIFE	}	
INSURANCE COMPANY,	}	
	}	
Defendant.	}	

**MEMORANDUM OPINION**

On August 11, 2006, during oral argument on the motion to dismiss filed on July 19, 2006, by defendant, Metropolitan Life Insurance Company, and on the motion to amend the complaint filed on August 7, 2006, by plaintiff, Mark King, D.M.D., plaintiff conceded defendant's contention that the requisites for jurisdiction under the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d), do not exist. The only other possible basis for jurisdiction in this court is plaintiff's enigmatic invocation of 28 U.S.C. §1331, without any description of or reference to a federal claim. As it turns out, plaintiff's reference to §1331 is the byproduct of the removal from state court of an earlier similar case by this defendant and other defendants based on alleged ERISA preemption of the state claim. Plaintiff denies that this is an ERISA case, and defendant now agrees with plaintiff and with this court that it is not an ERISA case. There being no alternative basis for jurisdiction in this court,

the court will by separate order dismiss the action without prejudice.

DONE this 16<sup>th</sup> day of August, 2006.

A handwritten signature in black ink, appearing to read "William M. Ackers, Jr.", written over a horizontal line.

WILLIAM M. ACKER, JR.  
UNITED STATES DISTRICT JUDGE